IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 30TH NOVEMBER 2006 / 9TH AGRAHAYANA 1928

WP(C).No. 9304 of 2006(G)

PETITIONER:

B.SHAJI, PRASANTHI, PRAKKULAM CHERRY,
THRIKARUVA VILLAGE, KOLLAM.

BY ADV. SRI.K.SUBASH CHANDRA BOSE

RESPONDENTS:
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1. THE OMBUDSMAN FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM.

2. THE SECRETARY, THRIKKARUVA GRAMA PANCHAYATH, KANJAVELI P.O., KOLLAM DISTRICT.

3. KRISHNAN GOPINATHAN, KRISHNA NIVAS, PRAKUNNATHU CHERRY, KANJAVELI, PRAKKULAM P.O., KOLLAM.

BY ADV. SRI.K.S.MANU (PUNUKKONNOOR) FOR R3
SRI.P.SREEKUMAR
GOVERNMENT PLEADER SRI.K.J.MOHAMMED ANSAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC 9304/2006

APPENDIX

PETITIONER'S EXHIBITS

EXHIBIT P1: TRUE COPY OF THE BUILDING TAX RECEIPT DATED 30.12.1993.

EXHIBIT P2: TRUE COPY OF THE BUILDING TAX RECEIPT DATED 21.12.2002

EXHIBIT P3: TRUE COPY OF THE ASSESSMENT REGISTER FOR THE PERIOD FROM 1993-94 TO 1997-98

EXHIBIT P4: TRUE COPY OF THE 1ST PAGE OF THE RATION CARD

EXHIBIT P5: TRUE COPY OF THE ASSESSMENT REGISTER FOR THE PERIOD 1988-89 TO 1992-93.

EXHIBIT P6: TRUE COPY OF THE TAX RECEIPT DATED 26.2.1996 FROM THRIKKARUVA VILLAGE OFFICE.

EXHIBIT P7: TRUE COPY OF THE TAX RECEITP DATED 07.06.2005, THRIKKARUVA VILLAGE OFFICE.

EXHIBIT P8: TRUE COPY OF THE ELECTRICITY RECEITP SHOWING THE ELECTRICITY BILL DATED 22.12.2005.

EXHIBIT P9: TRUE COPY OF THE INJUNCTION ORDER IN IA NO.1898/2006 IN OS NO.417 OF 2005 OF MUNSIFF COURT, KOLLAM.

EXHIBIT P10: TRUE COPY OF THE PROCEEDINGS OF THE 2ND RESPONDENT DATED 20.01.2006.

EXHIBIT P11: TRUE COPY OF THE ORDER OF 1ST RESPONDENT DATED 20.04.2005.

EXHIBIT P12: TRUE COPY OF THE ASSESSMENT REGISTER

//TRUE COPY//

P.A. TO JUDGE

PIUS C.KURIAKOSE,J.

W.P.(C) NO. 9304 OF 2006

Dated this the 30th day of November, 2006

J U D G M E N T

The petitioner impugnes Exhibit P11 order passed by the Ombudsman. Under Exhibit P11, the Ombudsman set aside the order of the Panchayat registering the name of writ petitioner Shaji as the owner of the building having door No.X/64, and directed that the name of the 3rd respondent be entered in the relevant register as the owner of the building in question. Exhibit P12 order will show that the order of the Ombudsman has been faithfully implemented by the Panchayat. Thus going by Exhibit P12, the name of the petitioner stands deleted and the same has been substituted by the name of the 3rd respondent. The petitioner in this writ petition seeks a direction that his name be restored to Exhibit P12. In other words, the prayer is that Exhibit P10 be cancelled and everything that has been done on the strength of Exhibit P10 be undone.

2. I heard the submissions of Sri.Subash Chandra Bose, learned counsel for the petitioner and those of Sri.K.S.Manu, learned counsel for the 3rd respondent. The Panchayat

interestingly has not entered appearance before this court. I feel that it would have been very convenient if the Panchayat had entered appearance or produced original of the property tax assessment register.

3. My attention was drawn by Mr.Subash Chandra Bose to the various documents placed on record by the parties, particularly Exhibits P3, P5 and P12 assessment registers. A scrutiny of Exhibits P3 and P5 will show that the building over which the petitioner claims ownership is a tiled building with cement floor having three rooms while going by Exhibit P5, the building over which the third respondent claims ownership is a building having an area of 500 Sq.ft, a portion of which is terraced while another portion is tiled. Significantly, the building shown in Exhibit P5 has got nine rooms as against the petitioner's building in Exhibit P3 which has got only three rooms. True, title over the land upon which the building or buildings are constructed seems to be with the third respondent. But the position is fairly settled that ownership over the building constructed on the land need not necessarily be with the owner of the land itself. The situation is that ownership of a building can remain with a person other than

the one who has ownership over the land.

4. For want of materials, particularly the original of the property tax assessment register, I am unable to settle the issue finally. I am told that the parties are already before the Munsiff Court, Kollam in OS 417/05. I am sure that the learned Munsiff will be in a better position to settle the issue.

Under these circumstances, I direct the parties to agitate the issue relating to ownership over the building which is subject matter of Exhibits P3 and P12, i.e., building having door No.X/64 of Thrikkaruva Grama Panchayat by producing evidence before that court. I direct the learned Munsiff to take an early decision on the suit uninfluenced by the order of the Ombudsman and also by the entires which have been made in the property tax assessment register as per Exhibit P12. The issue as to ownership of the building having Door No.X/64 will be decided by the learned Munsiff, taking into account the principle which obtains in this country that ownership over the building need not necessarily be with the owner of the land upon which the building is constructed. The learned Munsiff will dispose of the suit at the earliest, and at any rate, within four months of receiving copy of this judgment.

All the entries made in Exhibit P12 on the strength of Exhibit P11 order of the Ombudsman will be treated as provisional.

PIUS C.KURIAKOSE, JUDGE

Rp